

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 88044 OF 2019

[Arising out of Order-in-Original No: 107/2018-19/Commr/NS-I/JNCH dated 01st March 2019 passed by Commissioner of Customs (NS-I), Nhava Sheva.]

S R Traders

2318, 2nd Floor, Edta Market, Sardar Bazar,
New Delhi – 110006.

... Appellant

versus

Commissioner of Customs (NS-I)

Jawaharlal Nehru Port Trust Custom House
Nhava Sheva, Tal: Uran, Raigad, Maharashtra - 400707

...Respondent

APPEARANCE:

Shri Anand Sachwani, Advocate for the appellant

Shri Ashwini Kumar, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86231/2023

DATE OF HEARING:	01/03/2023
DATE OF DECISION:	24/08/2023

PER: C J MATHEW

Proceedings under section 28 of Customs Act, 1962 was initiated against the appellant, M/s SR Traders, in connection with

import of ‘cosmetics’, branded as ‘TYA’, against bill of entry no. 9813519/24.05.17 that, though found to be in conformity as far as description and quantity were concerned, was allegedly undervalued and non-compliant with Legal Metrology (Packaged Commodities) Rules, 2011 as well as Drugs and Cosmetics Act, 1940 leading to investigations culminating in impugned order¹ of Commissioner of Customs (NS-I), Jawaharlal Nehru Custom House (JNCH) rejecting the value of ₹ 25,78,752 declared therein, as also that of ₹ 53,84,088 in bills of entry no. 9338975/17.04.2017, no. 8385762/31.01.2017 and 7940386/23.12.2016 pertaining to past imports, under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Assessable value was enhanced to ₹ 1,51,64,962 and ₹ 3,09,75,414 respectively by recourse to rule 9, read with rule 7, of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for levy of ₹ 47,14,662 as duty short-paid while ordering recovery of ₹ 94,21,833 on the past imports under section 2 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, as well as penalty of like amount under section 114A of Customs Act, 1962 even as the live consignment, upon confiscation under section 111(m) of Customs Act, 1962, was permitted to be redeemed under section 125 of Customs Act, 1962 on payment of fine of ₹ 15,00,000. These, along with penalty of ₹ 4,50,000 under section 112 of Customs Act, 1962 and of ₹ 10,00,000

¹ [order-in-original No: 107/2018-19/Commr/NS-I/JNCH dated 1st March 2019]

under section 114AA of Customs Act, 1962, are under challenge in this appeal.

2. The impugned goods, said to have been manufactured by M/s Shantou Jiadili Cosmetics Co Ltd, China, despite having been imported over different periods in time were subjected to the same treatment in the impugned order following a market survey by officers of customs and justified by

‘7.1.....In situations such as this, one needs to be guided by the general practice in a free market economy and abnormally low prices certainly is justifiable ground for rejection of the declared prices and thereafter, there is a necessity for re-determination of assessable value in accordance with the rules prescribed.

7.2. Value of cosmetics in the present case could not have been determined in accordance with Rules 4 or 5 of CVR, 2007 because cosmetics imported by M/s S.R. Traders are of different weight, design etc. In this case the said details were not available in the documents nor have they been made available. Therefore, in absence of specifications, it was not possible for the investigation to find its identical or similar variety of goods in the documents for the past consignments.’

in the impugned order which Learned Counsel for appellant pointed out as not being consistent with the prescription in section 14 of Customs Act, 1962.

3. It was submitted by him that the statement recorded from the

importer clearly evinces absence of any misdeclaration and that similar goods had been imported in the past. It was argued that market inquiry was conducted behind the back of the importer and that the impugned computation lacked support of any documentation on the veracity of the prices adopted. Reliance was placed on the decision of Tribunal in *Commissioner of Customs, Pune v. Saccha Souda Pedhi* [2015 (321) ELT 348 (Tri-Mumbai)] in support thereof. Failure to apply the several alternatives in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 sequentially was contested by him with reference to the decision of the Tribunal in *Dohler India Pvt Ltd v. Commissioner of Customs, Pune* [2017 (357) ELT 1129 (Tri-Mumbai)] and recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 by reference to *Sumeet Exports (India) v. Commissioner of Customs (I), Nhava Sheva* [2019 (370) ELT 423 (Tri-Mumbai)]. He submitted that in *Kuber India v. Commissioner of Customs, Jaipur-I* [2016 (340) ELT 404 (Tri-Del)], it had been held by the Tribunal that prices obtained from internet was no substitute for the requirements enumerated in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4. We have heard Learned Authorized Representative.

5. It is clear from the impugned order that the appellant is a

regular importer; indeed, consignments imported in the past were taken up for detrimental action in the impugned proceedings. Market survey was also undertaken. Though it was submitted by the appellant that the market survey occurred behind their back, we find from record of proceedings before the lower authority that the contents of the report had not been disputed. We do not propose to go into contention of Learned Counsel about lack of credibility of the said market survey as, at this stage, we are concerned with sequential application of alternatives as prescribed in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; indeed, the adjudicating authority did not seem to have any hesitation in depending on rule 7 even as rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was invoked which forecloses option of proceeding beyond 'deductive value' except from inexorable compulsion of facts on which the impugned order is silent.

6. We find, on the other hand, that the goods are branded and it should be reasonable to presume that such branded goods are sold in the market; no other logical purpose occurs to us for import as such. It should have been apparent to the adjudicating authority that the appellant could have been asked to disclose the channel of distribution and for the retail prices to be ascertained thereby. Thence to proceed to deductive value should not have been impossible. Instead, the

residual method has been invoked which is inconsistent with the decision of the Tribunal, in *re Dohler India Pvt Ltd*, holding that

'6. It is seen from the above decisions that the assessing authority is required, in the first place, to assign cogent reasons for disallowance of the declared value, for the purposes of computation of customs duty, by resort to Rule 10A(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. This we find to be lacking except for an observation that there appeared to be a contemporaneous import at a different port at a higher price. In this context, we find that the reliance placed upon the decision in re Punjab Processors Private Limited may not suffice; the said decision has merely accorded the seal of approval to rejection of the declared value. Even if the rejection of the declared value is sustained legally, it is clearly laid down by the decision in re Eicher Tractors Ltd. that the assessing authority is required to apply the various valuation rules sequentially and to record reasons for rejection of each before proceeding to the next. We find a lack of this in the order pertaining to assessment.'

7. Learned Counsel contended that values of earlier imports are clearly ascertainable. However, no details were furnished to the adjudicating authority or now before us. It would only be appropriate for such evidence to be furnished and for the adjudicating authority to cause verification of prices at which these were actually sold. To enable that, we set aside the impugned order and direct fresh adjudication in the light of submissions made on behalf of appellant before us.

8. The matter is remanded to the original authority for re-determination on the facts pertaining to earlier imports to be furnished by the appellant.

(Order pronounced in the open court on 24/08/2023)

(AJAY SHARMA)
Member (Judicial)
*/as

(C J MATHEW)
Member (Technical)